

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

---

BILL H. DOMINGUEZ, on behalf of himself  
and all others similarly situated,

Plaintiff,

v.

YAHOO!, INC.

Defendant.

---

C.A. No. 2:13-cv-01887

**SEPARATE STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF YAHOO!  
INC.'S RENEWED MOTION FOR SUMMARY JUDGMENT**

Pursuant to Federal Rule of Civil Procedure 56 and the rules of this court, defendant Yahoo! Inc. ("Yahoo!") hereby submits the following statement of undisputed material facts in support of its Renewed Motion for Summary Judgment.

| <b><u>UNDISPUTED MATERIAL FACT</u></b>  | <b><u>SUPPORTING EVIDENCE</u></b>  |
|---|--|
| 1. The Email SMS Service did not have the capability or functionality, whether existing, latent, or potential, to generate telephone numbers randomly or sequentially.  | Declaration of Gareth Shue ("Shue Decl.") ¶¶ 5, 9-13, 16, 18, 21-22, 24-26 |
| 2. The Email SMS Service did not have the capability or functionality, whether existing, latent, or potential, to store and dial randomly or sequentially generated telephone numbers.                          | Shue Decl., ¶¶ 5, 9, 11-13, 16-18, 21-22, 24-26                            |
| 3. The Email SMS Service was designed solely for the purpose of forwarding text message alerts of a Yahoo user's incoming email to a single mobile telephone number manually inputted and verified by the user. | Shue Decl., ¶¶ 4-5, 9-11, 13 14, 16-18, 20-21, 24-25                       |

Respectfully submitted,

Dated: January 22, 2016

GREENBERG TRAURIG LLP

By: /s/ Brian T. Feeney

Brian Feeney  
2700 Two Commerce Square  
2001 Market Street  
Philadelphia, PA 19103

Ian C. Ballon (Admitted *pro hac vice*)  
1900 University Avenue  
5<sup>th</sup> Floor  
East Palo Alto, CA 94303

*Attorneys for defendant*  
YAHOO! INC.

**CERTIFICATE OF SERVICE**

I, Brian T. Feeney, attorney for Defendants, hereby certify that on January 22, 2016, I served a true and correct copy of the foregoing Separate Statement of Undisputed Facts in Support of Yahoo!, Inc.'s Renewed Motion for Summary Judgment via this Court's Electronic Court Filing System upon the following counsel of record:

James A. Francis, Esquire  
Mark D. Mailman, Esquire  
Geoffrey Baskerville, Esquire  
David A. Searles, Esquire  
Francis & Mailman, P.C.  
Land Title Building – 19<sup>th</sup> Floor  
100 South Broad Street  
Philadelphia, PA 19110  
(215) 735-8600

*Attorneys for Plaintiff*

/s/ Brian T. Feeney  
Brian T. Feeney, Esquire